

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

FILED BY *cy* D.C.  
05 MAY 12 PM 4:18  
ROBERT A. DI NOLIO  
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W.D. OF TN, MEMPHIS

JAMES FORTNER and  
AMERICAN POSTAL WORKERS  
UNION, MEMPHIS AREA LOCAL 96  
AFL-CIO,

Plaintiffs,

v.

No. 05-2034-B/V

UNITED STATES POSTAL SERVICE,

Defendant.

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**ORDER GRANTING RENEWED MOTION FOR VOLUNTARY DISMISSAL  
WITHOUT PREJUDICE AS TO AMERICAN POSTAL WORKERS UNION  
AND WITHDRAWAL OF COUNSEL**

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Before the Court is the April 20, 2005, renewed motion of the Plaintiff, American Postal Workers Union, Memphis Area Local 96, AFL-CIO (Union), for a voluntary dismissal without prejudice pursuant to Rule 41(a)(1), Federal Rules of Civil Procedure, and for withdrawal of counsel. The Court previously denied Plaintiff's motion based upon its failure to provide a certificate of consultation or a certificate of service. See Local Rules 7.2(a)(1)(B) and 7.2(a)(1). However, the Plaintiff has now presented a certificate of consultation indicating that its counsel has consulted with the attorney for the Defendant who apparently has no objection, although the individual Plaintiff, James Fortner, does object to the Union being allowed to withdraw from this lawsuit.

Because, according to its certificate of service, the Union forwarded a copy of this renewed motion to withdraw and for voluntary dismissal to the Plaintiff, James Fortner, it is

assumed that Fortner has received a copy of the pleading. Under the Local Rules of this district, a party has fifteen days from service to respond to a motion and if not, his failure to do so may be sufficient grounds to grant the relief sought in the motion. See LR7.2(a)(2). Plaintiff Fortner has not filed a written response in opposition to the Union's renewed motion.

Accordingly, based on Fortner's failure to submit a response, the Court grants the Union's motion to dismiss its claim without prejudice and for withdrawal of the Union's attorney as counsel in this lawsuit. However, in order for the Court to determine whether he plans to proceed with this action, Fortner will be given thirty days from the date of the entry of this order within which to advise the Court of his intention to pursue this litigation, with or without counsel. Failure of the Plaintiff Fortner to comply with this order may result in the dismissal of the lawsuit without further notice or hearing.

**IT IS SO ORDERED** this 12<sup>th</sup> day of May, 2005.

  
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J. DANIEL BREEN  
UNITED STATES DISTRICT JUDGE



## Notice of Distribution

This notice confirms a copy of the document docketed as number 7 in case 2:05-CV-02034 was distributed by fax, mail, or direct printing on May 13, 2005 to the parties listed.

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Honorable J. Breen  
US DISTRICT COURT